Supreme Court, U.S.
FILED
06-206 JUN 1 - 2006
OFFICE OF THE CLERK

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

IN RE: VORCELIA OLIPHANT,

Petitioner,

vs.

STATE OF CONNECTICUT
DEPARTMENT OF
TRANSPORTATION ET AL,

Respondents.

ON PETITION FOR WRIT OF MANDAMUS TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

IN PETITION FOR WRIT OF MANDAMUS

VORCELIA OLIPHANT
Counsel of Record, Pro Se Petitioner
130 CHERRY ANN STREET, NO. 3
NEW HAVEN, CT 06514
(203) 237-7515

QUESTIONS PRESENTED FOR REVIEW

1. Whether the discretionary authority provided by Congress under Article III Sec. II of the United States Constitution permits the United States Court of Appeals autonomy to prohibit the protection of the Constitutional rights afforded under the 1st , 5th, and 14th amendments and federal laws.

2. Whether the United States Court of Appeals is permitted to allow State law to trump Federal law by its refusing exercise of its jurisdictional authority pursuant to 28 U.S. C 1651 (a) and resorting to its discretionary authority under Article III of the United States Constitution.

PARTIES TO THE PROCEEDINGS

JAMES BYRNES, Commissioner, Francine Houston, Personnel Officer, ARTHUR GRUHN, Office of Const. Administrator, Brian Castler, Office of Const. Manager, John Does 1 & 2, JaneDoes 1 & 2, DEPARTMENT OF ADMINISTRATIVE SERVICES, MR. MAZZOLA, Commissioner of Dept. of Admin. Serv., KEITH ANDERSON, Ofcr. Dept. of Admin. Serv., JOANN DEVINE, Transportation Supervising Engineer,

Respondents,

MICHAEL LONERGAN, Office of Const. Admin., JAMES CONNERY, Trans. Supervising Engineer, FRANK KAMINSKY, Transportation Supervising Engineer, CORY CORDULA, Director of Affirmative Action, INES FELCIAN, Affirmative Action Officer, WANDA SELDON, Acting Director of Personnel

Consolidated-Defendants.

APPEARING FOR THE PETITIONER IN THIS COURT:

VORCELIA OLIPHANT
Counsel of Record, Pro Se
130 CHERRY ANN STREET, NO. 3
NEW HAVEN, CT 06514
(203) 237-7515

COUNSEL OF RECORD APPEARING FOR THE RESPONDENTS IN THE U. S. APPEALS COURT FOR THE SECOND CIRCUIT WAS:

JOSEPH A. JORDANO,
ASSISTANT ATTORNEY GENERAL
55 ELM STREET
P.O. BOX 120
HARTFORD, CT 06141-012ο
(860) 808 - 5340

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PETITION FOR WRIT OF MANDAMUS

Vorcelia Oliphant respectfully requests the Supreme Court to exercise its mandamus jurisdiction in the interest of justice for the protection of confidential communications between the Petitioner and her therapist. The Appellate Court by its ruling allowing for the disclosure of the highly confidential information, permits state law (Connecticut General Statute 52-146f (5) to trump federal law, particularly in the Supreme Court Case **Jaffee v. Redmond**, 518 U.S. 1 (1996) in which the Court held that "...confidential communications between a licensed psychotherapist and her patients...are protected from compelled disclosure under Rule 501 of the Federal Rules of Evidence". The Appellate Court dismissed claiming not to have jurisdiction to consider whether petitioner waived the psychotherapist privilege when her condition was made part of her original claim. This matter of "waiver" was not an issue raised by the respondents only their probative entitlement to the communications due to petitioner making her condition part of her original complaint. Since the Appellate Court considered the "waiver" matter sue sponte and dismissed the appeal, it appears in the interest of justice it could have done the same or sue sponte exercised its mandamus jurisdiction to protect the privacy, free speech and petitioner's 14th amendment right to due process which would out weight the respondents assertions of its probative right to the petitioners highly confidential information. See Id. *Jaffee* at 9, 10,11,12.

OPINIONS BELOW

The March 3, 2006, opinion of the United States Court of Appeal for the Second Circuit denying Vorcelia Oliphant's petition for appeal is not published. Mandate of the Summary Order issued on March 30, 2006. The order is reproduced in the Appendix.

STATEMENT OF JURISDICTION

The United States Court of Appeals for the Second Circuit denied Petitioner's appeal for lack of jurisdiction under its mandamus jurisdiction. This Court has jurisdiction pursuant to the following:

1) 28 U.S.C. 1651 (a) that authorized review of this Court for exceptional circumstances for which relief cannot be obtained in any other form or from any other court. Rules of the Supreme Court, Rule No. 20 (1)

2) The Supreme Court has jurisdiction of this appeal pursuant to 28 U.S.C § 2072 that authorizes this Court the power to prescribe general rules of practice and procedure for cases in the United States district court and the courts of appeals.

3) 28 U.S.C. § 1257, allows for review of a Final Judgment rendered by the highest court of a State…where the validity of a statute of any State is drawn into question on the ground of its being repugnant to the Constitution…or laws of the United States.

4) The Supreme Court has jurisdiction of this appeal according to Article III, §1, §§ 2(1), 2(2) and Amendments 1, 5, and 14 of the United States Constitution.

STATEMENT OF THE CASE

Background:

Petitioner-plaintiff appeals from a January 18, 2005 order (Appendix B) for a protective order preventing disclosure of her communications with her psychotherapist under the psychotherapist-patient privilege. Her health condition was originally raised in her federal complaint against the respondents named herein for discrimination based on race, national origin and gender and retaliation in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e et seq., and Connecticut General Statute § 46a-60(a)(4). Petitioner's complaint included additional claims related to health and the respondents.

The District Court dismissed all of petitioner-plaintiff's claims except for her Title VII claim against the respondent-defendants for retaliation for filing grievances and complaints, and a First Amendment claim under § 1983 for "retaliation after she organized approximately thirty individuals to seek redress for lack of promotion based on unlawful premises. Oliphant v. Conn. Dep't of Transp., Nos. 3:02CV700 & 3:04CV274 (PCD), 2004 WL 3249237, *1(D. Conn. Aug. 25, 2004).

During discovery and after, the District Court dismissed all of Petitioner-plaintiff's claims related to her health, the Respondents-defendants requested Medical Authorization Releases for Petitioner-plaintiff's medical

information. Petitioner-plaintiff complied with all the respondents-defendants requests but motioned for a Protective Order that her communications between herself and psychotherapist and other such providers remain confidential. The district court denied the motion rendering no opinion. Petitioner-plaintiff appealed to the United States Court of Appeals for the Second Circuit.

In response to the Petitioner-appellants Opposition to Respondents-appellees' Motion to Dismiss, the Appellate Court required Petitioner-appellant to explain whether she was requesting a Mandamus (Appendices 7-c through 8-c). Oral arguments were heard on this matter on November 18, 2005 (Appendix 11-c). Case was dismissed on March 3, 2006 by Appellate Court for lack of Jurisdiction to consider whether Petitioner-appellant waived the Psychotherapist-patient privilege when her condition was made a part of her original federal complaint. Motion for Stay being denied, the Mandate issued March 30, 2006. (Appendix A)

REASONS WHY THE WRIT SHOULD BE GRANTED

The Writ of Mandamus should issue due to the exceptional nature of this case.

Currently, Petitioner continues to be in therapy. Her ongoing care, safety and treatment are being compromised for fear of intrusion by the State of Connecticut into her confidential communications necessary for ongoing diagnosis and treatment.

The Appellate Court in its Mandate/Summary Judgment Order (See Appendix 5-a) refers only

to one note, in *Jaffee,* Id. At 15 n. 14, which states that "Like other testimonial privileges, the patient may of course waive the [psychotherapist privilege] protection". On the grounds of this note alone, ignoring the spirit of the U.S. Constitutional rights that Jaffee upholds, the Appellate Court dismissed Petitioner-appellant's appeal.

The Appellate Court cited *Schoffstall v. Henderson,* 223 F.3d 818, 822 (8th Cir. 2000). A case which speaks to the generality of the privilege of the medical records being sealed by the court. It did not address the psychotherapist privilege-specific- issue of protection of communications as in petitioner's appeal. As afore stated, medical information had been provided to respondents. The Second Circuit Court declined jurisdiction because it had not previously ruled on the "precise circumstances for a waiver to be effective" in its circuit (see Appendix 5-a¶2). However in a case decided by the Second Circuit and cited in the Second Circuit ruling dismissing Petitioner's appeal, cf. *John Doe Co. v. United States,* 350 F.3d 299, 302 (2d Cir. 2003) describes circumstances when a party does **not** forfeit its "testimonial privilege" by its actions related to the case (Appendix 5-a,¶2, footnote No.3).

This Second Circuit's exercise of its discretion to dismiss may be viewed as an indiscriminate ruling, and not one based on sound legal discretion. The Supreme Court addressed a similar issue in Marbury v. Madison, 5 U.S. 137(1803), at [***30] stating that

"the discretion of a court always means a sound, legal discretion, and not based on an arbitrary will....that "the court[s] are bound to grant it. They can refuse justice to no man."

The Supreme Court denied the claim in *Jaffee* at 518 U.S 7 that evidentiary need for disclosure…outweighs…patient's privacy interests" stating that the "…confidential conversations was diminished…because there were numerous eyewitness". In this matter before this Court, the Respondents have been given Authorizations to many of Petitioners, Medical Records with the exception of the communications.

The Second Circuit dismissal for lack of jurisdiction is grounds for mandamus review by this Court. The U.S. Congressional Act of March 3, 1891, Chapter 517 § 5 provides (United States Statutes At Large, Vol. 26 pp. 827-828) review of mandamus where the Appellate Court's jurisdiction is at issue and where "the law of a State is claimed to be in contravention of the Constitution of the United States. Connecticut General Statute 52-146 (f) (5) is such a law. *IN RE STATE OF NEW YORK,* 256 U.S. 503; *Smith v. Whitney,* 116 U.S. 167.

The Petitioner has no other means available to obtain relief of the District Court's ruling (Appendix 6-a¶ 2) permitting the State's Attorney General's Office access to her confidential communication.

The Appellate Court's ruling deprives petitioner of her 14th amendment right. The 14th amendment of 1868 that imposes on states and local governments that they not deprive its citizenry of life, liberty or property without due process has allowed the State of Connecticut General Statute 52-146f (5) to trump the federal laws and the 14th amendment right which states in §1 that:

All persons born or naturalized in the United States, and subject to the

jurisdictions hereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Petitioner is being harmed by the Appellate Court's order that can not be corrected upon finality of the proceedings. The only means for review the Appellate Court makes is for the petitioner to disobey the courts' orders warranting her to be sanctioned (Appendix 6-a,¶2) from which she can appeal especially not knowing the consequence of a sanction. Such methods amounts to extreme circumstance (Appendix 6-a¶1) to obtain review which even the Appellate Court cautions against in its dismissal ruling (Appendix 6-a, footnote 4). The Supreme Court has been against such extremes to obtain review of a discovery order. Such extremes could result in dismissal of Petitioner's case or worse; threaten her own safety and well being, a sanction even worse than what the courts could impose.

The Appellate Court by stating the only other means available for review other than its exercise of its mandamus jurisdiction is only by petitioner "challenging a discovery order" shows the rare circumstances this matter rests upon for the protection of her constitutional rights afforded her by the Constitution, Federal law and the psychotherapist-patient privilege. Numerous cases show that review of discovery orders may be had through mandamus due to the extraordinary circumstances warranting it in this case. CT-

Pacific Union Conference of Seventh-Day Adventists v. Marshall (1977), 434 U.S. 1305, 54 L Ed 2d 17. Other circuits mandamus is a proper means of review for discovery proceedings. *In Re National Mortg. Equity Corp. Mortg Pool Certificates Litigation*, 821 F.2d 1422 8 Fed R. Serv. 3d 596(9th Cir. 1987).

Thus mandamus is appropriate in this case because no other remedy adequately protects the Petitioner's interest. *In re von Bulow (Auersperg ex rel. von Bulow v. von Bulow)*, 828 F.2d 94,98 (2d Cir. 1987).

Why the Second Circuit refused to exercise it jurisdiction when it is within their discretion as provided by the U.S. Constitution, Article III to act stands against a host of federal laws that would support its sua sponte authority to act. It is a well established fact that even in a diversity matter between substantive state law and federal procedural law the federal rule applies regardless of contrary state law. 10A Fed Proc, L Ed 28:646-647. In this instance, the state law instituted not from the Connecticut judicial but originates through the state legislature. In addition, there are no cases that have been decided or precedent related to the Connecticut General Statute 52-146f (5). In addition, petitioner case originates in Federal Court. This Court has already ruled-out in Id. *Jaffee* the Federal Rule of Evidence, Rule number 501 that looks to the States for direction related to the psychotherapist privilege.

For the above stated reasons, this Court has the authority to issue a writ in aid of its appellate jurisdiction to exert the revisory appellate power necessary for the lawful exercise of authority by this Court for the protection of the Constitutional rights at risk. This Court's appellate jurisdiction

is invoked in the interest of justice. *Ex Parte Republic of Peru,* 318 U.S. 578.

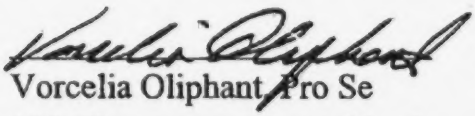
CONCLUSION

IN RE DEBS, 158 U.S. 564 the Supreme Court ruled that "it reaffirms the declaration …'that it matters not what form the attempt to deny constitutional right may take…it is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon'" *Boyd v. United States*, 116 U.S. 616, 635. The Second Circuit Court by exercising its discretion does so without the sound legal support of federal laws, statutes and treatise that support mandamus review. By the Second Circuit refusing to exercise it mandamus jurisdiction it permits State law to usurp authority over federal law, dismisses petitioner's constitutional rights and leaves her without any alternative means for review other than sanction for which the consequences could be dismissal of her case. The greatest sanction having already been imposed by the Appellate Court being that of Petitioner's right to free speech, to speak freely with therapist without the concern of her speech being monitored by the State of Connecticut. Said speech made for need of ongoing medical care has a strong reason to be kept confidential.

Wherefore, Petitioner respectfully requests that the Supreme Court issue a Writ of Mandamus/prohibition, prohibiting the compelled disclosure of her psychotherapists communications made confidentially without the expectation that such could be disclosed to anyone other

than her health care providers for the purpose of treatment and diagnosis and safety.

Respectfully submitted by:



Vorcelia Oliphant, Pro Se
130 Cherry Ann Street, No. 3
New Haven, CT 06514
(203) 237-7515

APPENDICES

APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

COURT STAMP FILED 3/3/06

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BBE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A USBSEQUENT STAGE OF THIS CASE, IN RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, at Foley Square, in the City of New York, on the 3rd day of March, two thousand and six.

PRESENT:

Hon. Sonia Sotomayor,
Hon. Robert A. Katzmann,
Circuit Judges,

Hon. Richard K. Eaton,
Judge.

Vorcelia Oliphant,
Plaintiff-Appellant,

v. No. 05-0618-cv

COURT STAMP: **MANDATE ISSUED: MARCH 30, 2006**

Appendix 2-a

DEPARTMENT OF TRANSPORTATION, JAMES BYRNES, commissioner, FRANCINE HOUSTON, Personnel Officer, ARTHUR GRUHN, Office of Const. Manager, BRIAN CASTLER, Office of Const. Manager, JOHN DOES 1 & 2, DEPARTMENT OF ADMINISTRATIVE SERVICES, MR. MAZZOLA, Commissioner of Dept. of Administrative Services, KEITH ANDERSON, ofcr. Dept. of Administrative services, JOANN DEVINE, Transportation Supervising Engineer,

Defendants-Appellees,

MICHAEL LONERGAN, JAMES CONNERY, FRANK KAMINSKY, CORY CORDULA, INES FELCIANO, WANDA SELDON

Consolidated-Defendants.

----------X

APPEARING FOR APPELLANT: VORCELIA OLIPHANT, *pro se,* New Haven, CT

APPEARING FOR APPELLEES: JOSEPH A. JORDANO, Assistant Attorney General, New Haven, CT.

UPON DUE CONSIDERATION, it is hereby ORDERED, ADJUDGED AND DECREED that the appeal from the January 18, 2005, order of the United States Court for the District of Connecticut (Dorsey, J.) is DISMISSED for lack of jurisdiction.

Plaintiff-appellant Vorcelia Oliphant ("plaintiff) appeals from a January 18, 2005 order of the district court denying a motion for a protective order preventing

disclosure of her medical information under the psychotherapist-patient privilege in her suit against the Connecticut Department of Transportation, The Connecticut Department of Administrative Services and a number of individual employees and managers (collectively, "defendants"), under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e et seq. ("Title VII"), and 42 U.S.C. § 1983.[1] Plaintiff alleges that the defendants' actions caused her severe emotional distress, led her to seek the services of a medical professional, and forced her to file for disability retirement. The district court denied the motion, holding that plaintiff had waived the psychiatrist-patient privilege by introducing her medical condition as an element of her claims. Plaintiff filed this appeal from the district court's denial of her motion for a protective order. She did not move to certify her appeal under 28 U.S.C. § 1292(b), and the district court did not sua sponte certify it.

On March 2, 2005, defendants moved this court to dismiss plaintiff's appeal for want of appellate jurisdiction. We issued an order denying the motion, explaining that,

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[1] Plaintiff alleges that defendants discriminated against her on the basis of race, gender and national origin and retaliated against her in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e et seq. ("Title VII") and Conn. Gen. Stat. § 46a-60(a)(4). She claims also that they discriminated against her on the basis of a perceived illness in violation of the American With Disabilities Act of 1990, and violated her rights under 42 U.S.C. §§ 1981 and 1983, the Equal Pay Act of 1964, as amended, 42 U.S.C. § 206, and the Family Medical Leave Act, 29 U.S.C. § 2601 et seq., and Section 504 the Rehabilitation Act of 1973, 29 U.S.C. § 794. the district court dismissed all of plaintiffs claims except for her Title VII claim against defendant-appellee the Department of Transportation ("DOT") for retaliation for filing various grievances and complaints, and a First Amendment claim under §1983 "for retaliation after she organized approximately thirty individuals to seek redress for lack of promotion based on allegedly unlawful premises." Oliphant v. Conn. Dep't of Transp., Nos. 3:02CV700 & 3:04Cv274 (PCD), 2004 WL 3249237, * 1 (D. Conn. Aug. 25, 2004).

although jurisdiction may be lacking under 28 U.S.C. § 1291 and collateral order doctrine, we could not determine on the papers then before us whether this proceeding was encompassed under our mandamus jurisdiction. *See, e.g, Chase Manhattan Bank N.A. v. Turner & Newall, PLC,* 964 F. 2d 159, 162-63 (2d Cir. 1992). Accordingly, we directed the parties to brief whether Plaintiff's appeal should be construed as a mandamus proceeding and whether plaintiff met the mandamus standard. We further directed the parties to supplement the record with relevant documents from the district court pertaining to how plaintiff's claims put her mental condition in issue.

The writ of mandamus "is meant to be used only in the exceptional case." *In re von Bulow*, 828 F.2d 94, 96 (2d Cir. 1987) (citation and internal quotation marks omitted). "Pretrial discovery orders, such as the one here, are generally not reviewable by means of direct appeal, and 'we have expressed reluctance to circumvent this salutary rule by use of mandamus.'" *United States v. Coppa,*. 267 F.3d 132,137 (2d Cir. 2001) (quoting *In re W.R. Grace & Co.,* 984 F.2d 587, 589 (2d Cir. 1993)). Mandamus may be available, however, where "'a discovery question is of extraordinary significance or there is extreme need for reversal of the district court's mandate before the case goes to judgment.'" *In re von Bulow*, 828 F.2d at 97 (quoting *Am. Express Warehousing, Ltd. V. Transamerica Ins. Co.,* 380 F.2d 277, 282 (2d Cir. 1967)); *accord Coppa,* 267 F.3d at 137-38.

Plaintiff contends that the medical information sought in the defendants' interrogatories and requests for production is absolutely protected against involuntary disclosure by the psychotherapist-patient privilege, pursuant to the Supreme Court's decision in *Jaffee v. Redmond,* 518 U.S. 1 (1996). In *Jaffee*, the Supreme court

recognized a federal common law privilege[2] that protects psychotherapists-patient communications. Although declining to "delineate [the] full contours" of the psychotherapist privilege, *Jaffee*, 518 at 18, the Court described the privilege broadly as protecting "confidential communications between a licensed psychotherapist and her patients in the course of diagnosis or treatment, "id. at 15. Finding that effective psychotherapy "depends upon an atmosphere of confidence and trust in which the patient is willing to make a frank and complete disclosure of facts, emotions, memories, and fears," id. At 10, the court concluded that "protecting confidential communications between a psychotherapist and her patient…outweigh[s] the need for probative evidence, "id. At 9-10.

As the Supreme Court noted in *Jaffe,* however, the psychotherapist-patient privilege, like other testimonial privileges, may be waived. *See id.* At 15 n. 14. Although we have not ruled on the precise circumstances in which a waiver is effective, we have no jurisdiction to consider that question here because plaintiff's assertion that there is an absolute privilege against such disclosure is without merit.[3]

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[2] Federal privilege law generally applies to all federal question cases. See Fed. R. Evid. 501. Because the only claims at issue here are federal claims under Title VII and 42 U.S.C. § 1983, we apply federal law. The result would not be any different under Connecticut law, however, because Connecticut General Statute § 52-146 f (5) provides that "[c]ommunications or records may be disclosed in a civil proceeding in which the patient introduces his mental condition as an element of his claim or defense."

[3] We note, however that courts that have considered the question have generally held that a plaintiff who alleges that defendants caused extreme emotional distress puts his or her mental state at issue and thus waives the psychotherapist-patient privilege. *See, e.g., Schoffstall v. Henderson,* 223 F.3d 818, 822 (8th Cir. 2000) ("Numerous courts since *Jaffee* have concluded that, similar to attorney-client privilege that can be waived when the client places the attorney's representation at issue, a

This case thus does not present the extreme need for reversal that must be shown to justify mandamus. *See In re Dep't of Investigation of the City of New York,* 851 F.2d 65, 68 (2d Cir. 1988)

Nor is this a case in which there are no other means of obtaining review of the order. "[G]enerally, a litigant who wants to challenge a discovery order must disobey the order, be held in contempt of court, then bring an appeal; mandamus is not usually appropriate where such path is available."[4] *In re S.E.C. ex rel. Glotzer,* 374 F. 3d 184, 188 (2d Cir. 2004). Accordingly, this dispute fails to present any of the rare circumstances permitting the use of mandamus.

For the foregoing reasons, we DISMISS for lack of jurisdiction plaintiff's appeal of the district court's denial of plaintiff's motion for a protective order.

FOR THE COURT:
Roseann B. MacKechnie, Clerk
/S/ Lucille Carr
BY:

---

plaintiff waives the psychotherapist-patient privilege by placing his or medical condition at issue."); *cf. John Doe Co. v. United States,* 350 F.3d 299, 302 (2d Cir. 2003) (" It is well established doctrine that in certain circumstances a party's assertion of factual claims can, out of considerations of fairness to the party's adversary, result in the involuntary forfeiture of privileges for matters pertinent to the claims asserted…The loss of the privilege in these circumstances is sometimes described as …'at issue' waiver because it results from the party having placed a contention at issue…"(emphasis in original)).

[4]Plaintiff should not construe this holding as an invitation to run the risk of contempt proceeding, *see supra* note 3.

Appendix 7-a

Filed
U.S. Court of Appeals for
the Second Circuit'
March 3, 2006

APPENDIX B

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

VORCELIA OLIPHANT,	:	
Plaintiff,	:	
	:	
	:	
-vs-	:	Civil No. 3:02cv700 (PCD)
	:	
STATE OF	:	
CONNECTICUT	:	
DEPARTMENT OF	:	
TRANSPORTATION	:	
et al.		
Defendants.		

RULING ON PLAINTIFF'S MOTION FOR PROTECTIVE ORDER FOR MEDICAL NOTES

Plaintiff moves [Doc. No. 202] for a protective order for her medical information on the basis that confidential communications between herself and her psychotherapist are protected by the psychotherapist-patient privilege. Plaintiff's motion is denied because the psychiatrist-patient privilege does not apply to cases, such as this, where plaintiff has placed her medical condition at issue. See e.g., Conn. Gen. Stat. § 52-146 f (5) ("Communications or records may be disclosed in a civil proceeding in which the patient introduces his mental condition as an element of his claim or defense…")

SO ORDERED

Dated at New Haven, Connecticut, January 18, 2005.[5]

/s/
Peter C. Dorsey
United States District Judge

[5] District Court Docket No. 223

APPENDIX C

Proceedings include all events. 05-0618-cv Oliphant v. Transportation. Docket as of May 8, 2006 1:16 pm

PUBLIC DOCKET FOR SECOND CIRCUIT COURT OF APPEALS — INDIV CLOSED

Filed 2/8/05

Court of Appeals Docket # 05-0618-cv
Nsuit: 440 CIVIL RIGHTS-OTHER
Oliphant v. Transportation
Appeal from: DISTRICT OF CONNECTICUT (NEW HAVEN)

Case type information:
Civil
United States
None

Lower court information:
District: 02-cv-700
Trial Judge: Peter C. Dorsey
MagJudge:
Date Filed: 04/18/02
Date order/judgment: 1/19/2005
Date NOA filed: 1/28/2005
Fee status: Paid

Panel Assignment:
Panel: JON RAK RR SS RAK 40 Foley Sq., Rm 15
Date of decision: 3/3/06
Prior cases: None
Current cases: None

Appendix 2-c

Official caption 1/

Docket No. [s]: 05-618-cv

Vorcelia Oliphant,

Plaintiff-Appellant,

v.

Department of Transportation, James Byrnes, Commissioner, Francine Houston, Personnel Officer, Arthur Gruhn, Office of Const. Manager, Brian Castler, Office of Const. Manager, John Doe's 1 & 2, Jane Doe, 1-2, Dept. of Administrative Services, Mr. Mazzola, Commissioner of Dept. of Administrative Services, Keith Anderson, Ofcr. Dept. of Administrative Services, JoAnn Devine, Transportation Supervising Engineer,

Defendants-Appellees,

Michael Lonergan, James Connery, Frank Kaminsky, Cory Cordula, Ines Feliciano, Wanda Seldon

Consolidated-Defendants.

Authorized Abbreviated Caption 2/

Docket No. [s] : 05-0618-cv

Oliphant v. Transportation

1/Fed. R. App. P Rule 12 [a] and 32 [a]

2/For use on correspondence and motions only.

Appendix 3-c

Arthur Gruhn
Defendant-Appellee
Office of Const. Manager

Joseph A. Jordano Esq.
[LD n]
U.S. Attorneys Office.
District of Connecticut
157 Church St.
New Haven, CT 06510
(860) 808-5340

Brian Castler
Defendant-Appellee
Office of Const. Manager

Joseph A. Jordano Esq. (See above)
[LDn]

Cory Cordula
Consolidated-Defendant

Joseph A. Jordano Esq. (See above)
[LDn]

Department of Transportation
Defendant-Appellee

Joseph A. Jordano Esq. (See above)
[LDn]

Dept. of Administrative Services
Defendant-Appellee

Joseph A. Jordano Esq. (See above)
[LDn]

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Francine Houston
Defendant-Appellee
Personnel Officer

Joseph A. Jordano Esq. (See above)
[LDn]

Frank Kaminsky
Consolidated-Defendant

Joseph A. Jordano Esq. (See above)
[LDn]

Ines Feliciano
Consolidated-Defendant

Joseph A. Jordano Esq. (See above)
[LDn]

James Byrnes
Defendant-Appellee
Commissioner

Joseph A. Jordano Esq. (See above)
[LDn]

James Connery
Consolidated-Defendant

Joseph A. Jordano Esq. (See above)
[LDn]

Jane Doe, 1-2
Defendant-Appellee

Joseph A. Jordano Esq. (See above)
[LDn]

Joann Devine
Defendant-Appellee
Transportation Supervising Engineer

Joseph A. Jordano Esq. (See above)
[LDn]

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John Doe's 1 & 2
Defendant-Appellee

Joseph A. Jordano Esq. (See above)
[LDn]

Keith Anderson
Defendant-Appellee
Ofcr. Dept. of Administrative Services

Joseph A. Jordano Esq. (See above)
[LDn]

Michael Lonergan
Consolidated-Defendant

Joseph A. Jordano Esq. (See above)
[LDn]

Mr. Mazzola
Defendant-Appelle
Commissioner of Dept. of Administrative Services

Joseph A. Jordano Esq. (See above)
[LDn]

Vorcelia Oliphant
Plaintiff-Appellant

Vorcelia Oliphant
n/a
130 Cherry Ann Street., No. 3
New Haven, CT 06514
(203) 237-7515

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2/8/05 Copy of notice of appeal and district court docket entries on behalf of APPELLANT Vorcelia Oliphant, filed.

2/8/05 Copy of receipt re: payment of docketing fee filed behalf of APPELLANT Vorcelia Oliphant, #N14525

2/8/05 Copy of U.S. District Court Order dated January 18, 2005 endorsed by Hon. Peter c. Dorsey, U.S.D. J.

2/8/05 Note PRIOR case numbers(s) 03-7772

2/23/05 Notice of appearance form on behalf of Joseph Jordano, Esq., filed. (Orig in acco, copy to Calendar)

2/28/05 APPELLANT Vorcelia Oliphant, Record on Appeal Electronically filed (Original documents remain in the originating court).

3/2/05 Appellee Department of Transportation, Appellee James Byrnes, Appellee Francine Houston, et al motion dismiss the appeal filed with proof of service.

3/16/05 Appellant Vorcelia Oliphant motion for denial of motion to Appellees motion to dismiss, filed with proof of service

3/16/05 Appellants papers in opposition to motion dismiss the appeal filed with proof of service.

4/18/05 Notice of appearance form on behalf of Vorcelia Oliphant, Exq., filed. (orig in acco, copy to Calendar)

4/18/05 APPELLANT Vorcelia Oliphant, Form C/A received, with proof of service.

7/8/05 Order FILED DENYING motion dismiss the appeal by Appellee Francine Houston, Appellee Arthur Gruhn, Appellee Brian Castler, Appellee Joann Devine, Appellee John Doe's 1&2, Appellee Administrative Services, Appellee Department of Transportation, Appellees, Mr. Mazzola, endorsed on motion dated 3/16/2005. Appellees, through counsel, move to dismiss appellant's appeal based on lack of appellate jurisdiction. Upon due consideration, it is ORDERED that the motion to dismiss is denied. Although appellate jurisdiction is lacking under 28 U.S.C. Section 1291 and collateral order doctrine, it is possible that the proceedings is encompassed by this Court's mandamus jurisdiction. See Chase Manhattan Bank, N.A. v. Turner & Newall, PLC, 964 F.2d 159, 163(2d Cir. 1992) (discovery orders involving a claim of privilege may be reviewed pursuant to mandamus jurisdiction when: (i) an issue of importance and first impression is raised; (ii) the privilege will be lost in the particular case if review must await a final judgment; and (iii) immediate resolution will avoid the development of discovery practices or

doctrice(sic) undermining the privilege). However, because the parties have not yet provided the Court with all relevant documents, it us unclear whether the Appellant's appeal is properly construed as requesting a writ of mandamus, and if so, whether she is entitled to the writ. Therefore the Clerk of Court is directed to enter a briefing schedule and the parties are instructed to: (1) discuss in their appellate briefs whether the Appellant's appeal should be construed as a mandamus proceeding, whether she meets the mandamus standard, and whether her complaint for other pleadings put her mental condition at issue such that the medical records are discoverable; and (2) forward copies of all relevant documents from the district court pertaining to how the Appellant's mental condition was placed at (issue).

7/11/05 Notice to counsel/pro se re: Order dated July 8, 2005

7/11/05 Scheduling order # 1 filed. Appellants brief due 8/10/05. Appellees brief due 09/09/2005. Ready week 10/24/2005

7/11/05 Notice to counsel/pro se: Scheduling Order # 1 dated July 11, 2005

8/1/05 Index in lieu of record on Appeals Electronically Filed (Original documents remain in the originating court).

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8/10/05 APPELLANT Vorcelia Oliphant, brief and joint appendix with proof of service filed.

8/16/05 APPELLANT Vorcelia Oliphant, supplemental brief filed with proof of service.

8/22/05 Letter dated August 16, 2005 from Assistant Attorney General, Joseph A. Jordano, regarding availability, received

9/2/05 Cory Cordula, Frank Kaminsky,. Ines Feliciano, James Connery, ET Al; APPELLEE Department of Transportation, Dept. of Administrative Services, John Doe's 1&2, ET AL, LETTER BRIEF filed with proof of service.

9/16/05 Notice of appeal acknowledgment letter from Vorcelia Oliphant received.

9/16/05 Notice of appearance form on behalf of Joseph Jordano, Esq., filed. (Orig in acco, copy to Calendar)

9/16/05 Appellant Vorcelia Oliphant motion for transcripts and to su0pplement appendix with the transcripts, filed with proof of service.

9/21/05 Appellant Vorcelia Oliphant motion for an extension of time to receive transcripts and respond to defendants brief, filed with proof of service.

9/30/05 Set for argument on 11/18/05 B PANEL.

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10/7/05 Order FILED DENYING motion for transcript and to supplement appendix,by Appellant Vorcelia Oliphant, endorsed on motion dated 9/21/2005. IT IS HEREBY ORDERED THAT the motion is DENIED without prejudice to renewal after appellant moves the district court for the transcript. Endorsed for the Court by CJM, Sup. Staff Attorney.

10/7/05 Order FILED GRANTING motion for an extension of time by Appellant Vorcelia Oliphant, endorsed on motion dated 9/21/2005. IT IS HEREBY ORDERED THAT briefing schedule is suspended until transcript motion is decided. Endorsed for the Court by CJM, Sup. Staff Attorney.

10/8/05 Notice to counsel/pro se re: Motion Order dated 10/7/05.

10/8/05 Notice to counsel/prose re: Motion Order dated 10/7/05

11/15/05 Appellant Vorcelia Oliphant motion adjourn oral argument filed with proof of service.

11/16/05 Notice to counsel in re: Order denying motion to adjourn oral argument.

11/16/05 Order FILED DENYING motion for adjournment of oral argument by Appellant Vorcelia Oliphant,

endorsed on motion dated 11/15/2005(FOR THE COURT – AV).

11/18/05 Case heard before SOTOMAYOR, KATZMANN, C.JJ, EATON, USCIT

11/22/05 APPELLANT Vorcelia Oliphant motion to stay proceedings in District court and for entire record to be forwarded, filed with proof of service.[6]

3/3/06 Judgment filed; judgment of the district court is DISMISSED by detailed order of the court without opinion filed.(SS)

3/3/06 Notice to counsel/pro se re: Summary Order dated 3/3/06

3/8/06 Order FILED DENYING motion stay by Appellant Vorcelia Oliphant, endorsed on motion dated 11/22/2005. IT IS HEREBY ORDERED THAT the motion is DENIED as moot in light of Order filed 3/3/06[7]

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[6] Appellant's motion for Stay, is actually dated November 16, 2005 with proof of mailing for this date. This motion was filed prior to appellant knowing of the Order DENYING her motion for adjournment of oral arguments also dated 11/16/05 above. Appellant relayed in the requests how she was being irreparably harmed by the District Court issuing orders up to 150 days after motions were filed, discrepancies in the district court docket related to the orders and of how the orders issued during the time when she was before both the appellate and district court prejudice her. The Stay was denied.

[7] See 11/22/05 entry and note 6 above. This motion was a separate motion for stay filed

3/8/06 Order FILED DENYING motion denial of motion by Appellant Vorcelia Oliphant, endorsed on motion dated 11/22/2005. IT IS HEREBY ORDERED THAT the motion is denied as Moot in light of Order filed 3/3/06. Endorsed for the court by TWY, Motions Staff Attorney.

3/14/06 Notice to counsel/pro se re: Motion Order dated 3/8/06.

3/14/06 Notice to counsel/pro se re: Order dated 3/8/06

3/17/06 Appellant Vorcelia Oliphant motion stay the mandate filed with proof of service.

3/21/06 Papers < Affidavit in support of Motion to Stay the Issuance of Mandate>from APPELLANT Vorcelia, filed.

3/23/06 Order FILED DENYING motion to stay the mandate by Appellant Vorcelia Oliphant, endorsed on motion dated 3/17/2006. It is HEREBY ORDERED that the motion to stay the mandate is DENIED. Before: SS, RAK, CJJ. RKE, USCIT. Endorsed for the court by TWY, Motions Staff Attorney.

3/27/06 Notice to counsel/pro se re: Motion Order dated 3/27/06

3/30/06 Judgment MANDATE ISSUED. CLOSED

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4/13/06 Acco received in records room from team.

5//1/06 Mandate receipt returned from the district court.